

DOCKETED

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

OCT 27 PM 3 26

CLERK
U.S. DISTRICT COURT

THE MAGNAVOX COMPANY and)
SANDERS ASSOCIATES, INC.,)

Plaintiffs,)

v.)

APF ELECTRONICS, INC., et al.,)

Defendants.)

Civil Action No. 77 C 3159

RESPONSE OF DEFENDANTS JEWEL COMPANIES, INC.
OSCO DRUG, INC., AND TURN-STYLE, INC. TO
PLAINTIFF'S INTERROGATORY NOS. 2, 7, 10 AND 11

Defendants Jewel Companies, Inc., Osco Drug, Inc. and
Turn-Style, Inc. hereby respond to Plaintiff's Interrogatory
Nos. 2, 7, 10 and 11 as follows:

2. Fully identify defendant's video games by
responding to the following:

(a) State the model or type name or number
of each video game made, used, or sold by defendant within
the United States during the period April 25, 1972 through
August 5, 1975 and the model or type name or number of
each video game made, used, or sold by defendant within the
United States since August 5, 1975.

Answer to Interrogatory No. 2(a).

Model No.

APF 401 TV Fun Mark I

APF 442 TV Fun

APF 402 TV Fun

ATARI C-100 Pong

ATARI C-140 Super Pong

ATARI C-380 Video Pin Ball

ATARI CX-2600

COLECO 6040 TELSTAR

COLECO 6030 TELSTAR ALPHA

COLECO 6046 TELSTAR Ranger

COLECO 6130 TELSTAR Color-
matic

COLECO 6065 TELSTAR Combat

COLECO 6175 TELSTAR Arcade

EXECUTIVE GAMES 0062 Face
Off

FAIRCHILD 0800 Console
Channel F

HANIMEX 777

HANIMEX 888G

National Semiconductor
Adversary

Venture VS-1 Video Sports

2.(b) As to each model or type name or number video game stated in defendant's response to paragraph (a) of this interrogatory:

(i) state whether it is a coin-operated video game or a consumer video game;

Answer to Interrogatory No. 2(b)(i).

All of the above-identified models are consumer video games.

(ii) describe the game or games played thereon as they appear to the player.

Answer to Interrogatory No. 2(b)(ii).

Documents describing the models listed above will be produced for inspection and copying by counsel for Defendants.

(iii) identify the document or documents containing a schematic electrical circuit diagram thereof;

Answer to Interrogatory No. 2(b)(iii).

Defendants do not have such documents.

(iv) identify the person or persons having the greatest knowledge of the electrical design and operation thereof;

Answer to Interrogatory No. 2(b)(iv).

Defendants have no persons with the particular knowledge of the electrical design and operation.

(v) identify the manufacturer and/or supplier and the manufacturer's and/or supplier's part or model number of any integrated circuit(s) included in such video game which integrated circuit(s) was specifically intended by its manufacturer to be used in and/or was sold for use in video games;

Answer to Interrogatory No. 2(b)(v).

Not known by Defendants.

(vi) if any one or more units of that model or type of video game was not manufactured by defendant, identify the party who manufactured those video games not manufactured by defendant and the party from whom defendant acquired those video games.

Answer to Interrogatory No. 2(b)(vi).

See answer to Interrogatory No. 2(a).

2. (c) As to each model or type name or number video game stated in response to paragraph (a) of this interrogatory,

(i) state the number of units of that game made, used, or sold by defendant within the United States during the period August 25, 1972 through August 5, 1975 and defendant's gross sales in dollars and the total profit made by defendant for sales of that game for sales made during the period August 25, 1972 through August 5, 1975;

(ii) state the number of units of that game made, used or sold by defendant within the United States since August 25, 1972 and defendant's gross sales in dollars and the total profit made by defendant for sales of that game made since August 25, 1972;

(iii) state the number of units of that game made, used, or sold by defendant within the United States since August 5, 1975 and defendant's gross sales in dollars and the total profit made by defendant for sales of that game made since August 5, 1975.

Answer to Interrogatory No. 2(c).

Interrogatory No. 2(c) is objected to as not being reasonably calculated to lead to the discovery of admissible evidence with respect to the issues of validity and infringement in this lawsuit. This Interrogatory is also objected to as premature, in that no infringement liability has been

established with respect to Defendants.

7. (a) Does defendant contend that any of the video game models or types identified in the response to paragraph (a) of interrogatory 2 does not come within the terms of one or more claims of the patent in suit? If so, as to each and every video game model or type identified in defendant's response to interrogatory 2 which defendant contends does not come within the terms of one or more claims of the patent in suit, state in detail each and every reason, ground, or basis to support defendant's contention that that video game model or type does not come within the terms of each of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57, 60, 61, 62, 63, and 64 of the patent in suit.

Answer to Interrogatory No. 7(a).

Yes.. Because of the undue multiplicity of the claims of the patents in suit and as a result of the indefiniteness of the claims of the patents in suit, counsel for Defendants is unable to ascertain the precise scope of the claims of the patent in suit. However, counsel for Plaintiff Magnavox, including Theodore Anderson and James T. Williams, have informed counsel for Defendants that the patents in suit are not intended to cover video games in which a first displayed symbol coincides with a second displayed symbol causing one of the displayed

symbols to either explode or evaporate from display.

Defendants intend to pursue further discovery in order to obtain additional information which may be relevant to this Interrogatory.

7. (b) Does defendant contend that plaintiffs are estopped from asserting that any one of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57, 60, 61, 62, 63, or 64 is infringed by the manufacture, use and/or sale by defendant of any one or more of the video game models or types identified in defendant's response to interrogatory 2? If so, as to each such claim and as to each video game as to which defendant contends plaintiffs are estopped, specifically identify each limitation, interpretation, admission, representation, proceedings, amendments, arguments, presentation, or other item which defendant alleges resulted in said estoppel; state with specific reference to paper, page number, and line number, if any, in the file history of the application or applications for the patent in suit where said limitation, interpretation, admission, representation, proceedings, amendments, arguments, presentation, or other item occurred; and state every reason, basis, or ground upon which defendant alleges each such limitation, interpretation, admission, representation, proceedings, amendments, arguments, presentation, or other item resulted in such estoppel.

Answer to Interrogatory No. 7(b).

Yes. See response to Interrogatory No. 7(a).

10. Has defendant given or received any indemnity agreements relating to or including claims or charges of patent infringement of the patent in suit? If so, and separately as to each such indemnity agreement, identify the parties other than defendant to that agreement; state the date such indemnity agreement was entered into and the dates, if any, such indemnity agreement was terminated or modified; state the full and complete terms of such indemnity agreement and any modifications thereto.

Answer to Interrogatory No. 10.

Yes. Copies of the pertinent portions of such indemnity agreements will be produced for inspection and copying by counsel for Plaintiffs.

11. With respect to plaintiffs acquisition of knowledge of the patents in suit:

(a) State the date when defendant first gained knowledge or was advised or received notice of that patent or of the application which resulted in that patent;

11. (b) State the date when defendant first gained knowledge or was advised or received notice that plaintiffs individually or collectively were asserting any exclusive or patent rights in the industry or trade related to video games;

11. (c) State in detail the manner in which defendant gained or received the knowledge, advice or notice specified in paragraphs (a) and (b) of this interrogatory and identify the person or persons, firm or firms, corporation or corporations and the like from whom such knowledge, advice or notice was gained or received;

11. (d) Identify all documents relating to the knowledge, advice and notice referred to in paragraphs (a) through (c) hereof;

Answer to Interrogatory Nos. 11(a) - 11(d).

Defendants first gained knowledge of the patents from reading about the filing of the instant lawsuit in the August 29, 1977 edition of Retail Home Furnishings, page 49.

(e) State whether defendant or an officer, director, or managing agent of defendant has ever formed an opinion as to whether the claims of the patent in suit were valid and/or enforceable against defendant and/or whether the manufacture, use, and/or sale by defendant of any of the video game models or types identified in defendant's response to paragraph (a) of interrogatory 2 hereof constituted infringement of said patent;


(f) If defendant's response to paragraph (e) of this interrogatory is in the affirmative, state the date or dates upon which defendant or any of its officers, directors, or managing agents arrived at each such opinion or opinions as to whether the claims of the patent in suit were valid and/or enforceable against defendant and/or whether the manufacture, use, and/or sale by defendant of any of the video game models or types identified in defendant's response to paragraph (a) of interrogatory 2 hereof constituted an infringement of said patent; state each such opinion or opinions; identify each officer, director, managing agent, or other personnel of defendant who formed and held that opinion or opinions; identify every document containing or reporting that opinion or opinions; and identify each and every alleged fact, act, or occurrence and each and every document considered in arriving at that opinion or opinions.

Answer to Interrogatory No. 11(e) and 11(f).

Defendants' contentions are set forth in their Answers to the Complaint and in their responses to Plaintiffs' Interrogatories. Any further information sought by Plaintiffs concerning formulations within the mind of Defendants' employees is objected to as being beyond the scope of Rule 33 of the Federal Rules of Civil Procedure, not reasonably calculated to lead to the

discovery of permissible evidence and relating solely to
privileged information.

JEWEL COMPANIES, INC.
OSCO DRUG, INC.
TURN-STYLE, INC.

By 
George H. Gerstman
Attorney for Defendants

Pigott & Gerstman, Ltd.
105 West Adams Street
Suite 2390
Chicago, Illinois 60603
Telephone: (312) 263-4350

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was sent, by first class mail, postage prepaid, this 25th day of October, 1978, to the following persons:

Marshall A. Burmeister, Esq.
Burmeister, York, Palmatier, Hamby
& Jones
135 South LaSalle Street
Chicago, Illinois 60603

Louis M. Rundio, Jr., Esq.
McDermott, Will & Emery
111 West Monroe Street
Chicago, Illinois 60603

Howard S. Golden, Esq.
Robbins, Coe, Rubenstein & Shafran, Ltd.
69 West Washington Street
Chicago, Illinois 60602

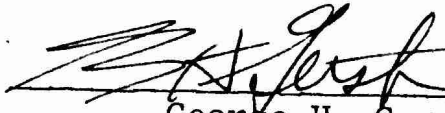
Theodore W. Anderson, Esq.
James T. Williams, Esq.
Neuman, Williams, Anderson & Olson
77 West Washington Street
Chicago, Illinois 60602

Morrison & Kamins
33 North LaSalle Street
Chicago, Illinois 60602

John Simpson, Esq.
Hill, Gross, Simpson, Van Santen, Steadman,
Chiara & Simpson
70th Floor Sears Tower
Chicago, Illinois 60606

Malcolm M. Gaynor, Esq.
Schwartz, Cooper, Kolb & Gaynor
33 North LaSalle Street
Chicago, Illinois 60602

Robert A. Sternberg, Esq.
Cohon, Raizes & Regal
208 South LaSalle Street
Chicago, Illinois 60604


George H. Gerstman
Attorney for Defendants